Date: July 4, 1994 BQC 94-042

To: Nursing Homes NH 28

From: Judy Fryback, Director
Bureau of Quality Compliance

Subject: Protection of Resident Funds (Medicaid and Medicare Residents/Recipients)

This memorandum serves to update and replace the Bureau of Quality Compliance (BQC) numbered memo BQC 94-007 dated January 31, 1994, "Protection of Resident Funds (Medicaid and Medicare Residents/Recipients)," which advised the nursing home industry of Federal regulations, 42 CFR 483.10 (c)(8), effective October 1, 1993, relating to the Resident Rights protection of resident funds. This updated memo will clarify questions that the bureau has received from the industry relative to question number 4 regarding hair hygiene services and question number 11 concerning social events and facility activities programs.

For your reference and convenience, a copy of the specific federal regulation is attached to this memorandum. The regulation protects the personal funds (including personal needs allowance) of residents in skilled nursing facilities (SNFs/Title 18) and nursing facilities (NFs/Title 19) whose care is paid for or by Medicare and/or Medicaid.

In addition, the regulation identifies a number of the items and services that are included in program payment under Title 18 and Title 19 and those items and services for which a facility may charge residents.

As indicated in 42 CFR 483.10(c)(8), the following services are included effective October 1, 1993, in the Medicare or Medicaid payment and may not be charged to a resident/recipient of these payment programs:

A.Nursing services
B.Dietary services
C.An activities program
D.Room/bed maintenance services
E.Routine personal hygiene items and services as required to meet the needs of residents
F.Medically-related social services

In addition the following items may be charged to the Medicare/Medicaid resident, if the items are requested by the resident, if the facility informs the resident that there will be a charge and if payment is not made by Medicare or Medicaid for the item or service:

A. Telephone
B. Television/radio for personal use
C. Personal comfort items, including smoking materials, notions and novelties, and confections
D. Cosmetic and grooming items in excess of those for which payment is made under Medicaid or Medicare
E. Personal clothing
F. Personal reading material
G. Gifts purchased on behalf of a resident
H. Flowers and plants
I. Social events and entertainment offered outside the scope of the required activities program
J. Non-covered special care services such as privately hired nurses or aides
K. Private room, except when therapeutically required
L. Specially-prepared or alternative food requested instead of the food generally prepared by the facility

Certain qualifiers to the regulation pertain regarding the request of the above items:

A. The facility must not charge residents (or his/her representative) for any item or service not requested by the resident.

B. The facility must not require a resident (or his/her representative) to request any item or service as a condition of admission or continued stay.

C. The facility must inform the resident (or his/her representative) who requests an item or service for which a charge will be made that there will be a charge for the item or service and what the charge will be.

If an item or service is reimbursable under Medicaid or Medicare, the facility may neither impose a charge against the personal funds of the resident nor charge the resident, or his/her representative for the item or service. However, if the resident requests services or items that are more expensive than, or in excess of, the Medicaid/Medicare covered service, the facility may charge the resident for the difference between the charge for these requested services and the actual Medicaid/Medicare allowable cost of these services.

Questions and Answers

1. What is meant by "resident's personal funds"?

   Answer: The personal funds to which the regulation is referring are those funds "that belong to a resident." This would include the monthly personal needs allowance for Medicaid recipients.

2. If a resident requires more nursing care or more expensive nursing care than the facility is reimbursed for under Medicaid, may the facility charge the resident the amount over the Medicaid reimbursable amount?

   Answer: No. This nursing care still is covered in the Medicaid rate and no additional charge may be made to the resident. As a provider in the Medicaid program, the facility is required to accept Medicaid payment as payment in full. The facility is not permitted to charge the resident for items and services that the facility believes are not adequately reimbursed under the Medicaid state plan.

3. What is included in "routine personal hygiene items and services" that may not be charged to the Medicaid/Medicare resident?

   Answer: The following listed items and services (which are listed in the regulation) are examples of the types of items and services that are the subject of the requirements and do not represent the universe of items and services that, when needed, must be provided without cost to the resident:

   -hair hygiene supplies, comb, brush
   -bath soap, disinfecting soaps or specialized cleansing agents when indicated to treat special skin problems or to fight infection
   -razor, shaving cream
   -toothbrush, toothpaste, denture adhesive, denture cleaner, dental floss
   -moisturizing lotion
   -tissues, cotton balls, cotton swabs
   -deodorant
   -incontinence care and supplies
   -sanitary napkins and related supplies
   -towels, washcloths, hospital gowns
   -over the counter drugs
   -hair and nail hygiene services
   -bathing
   -personal laundry

4. What is meant by routine "hair hygiene services"?

   Answer: These would include such services as combing, brushing, shampooing and simple trimming (e.g., trimming bangs). These services are included in payment (Medicaid) regardless of whether they are performed by facility staff or by an outside contractor.

Hair hygiene services do not include hair cuts beyond simple trims, coloring, permanents, relaxing, or other hair services not required for hygienic reasons. Residents who choose to receive such services may be charged for them regardless of whether the individuals performing the services are facility employees.

Residents who choose to receive a shampoo and set from licensed beauticians may be charged for the service whether or not the beautician is an employee of the facility. Beautician/barber service is not included in the daily Medicaid rate. Employment status is not the issue; rather, the issue is the type of service activity that is being performed.

Responses to further issues:

Issue a. Nursing homes do not generally employ licensed barbers or hair-dressers to perform routine cares of the resident; therefore, it would be illegal for a Certified Nursing Assistant (CNA) to perform haircuts without a license.

Response:

The Wisconsin Barber and Cosmetology Examining Board statute Chapter 454 defines "Barbering and Cosmetology" as "for compensation, performing any one or a combination of the following practices:

(a) Arranging, styling, dressing, shampooing, cleansing, curling, drying, dyeing, tinting, coloring, bleaching, waving, cutting, shaving, trimming, relaxing, singeing or performing similar work upon the hair or beard of any person by any means.

(b) Massaging, cleansing, stimulating, manipulating...or performing similar work upon the skin of any person."

From the above, it would appear that any personal grooming of hair or skin would require the individual to be licensed. However, later in the statute an exception is created:

> "(2) Barbering or cosmetology...does not include:
>
> (b) Personal care services performed in correctional institutions, hospitals and licensed nursing homes under the supervision of a person responsible for inmate or patient care." 454.02(2)(b) Wis. Stats.

Therefore, given the preceding information, it would not be "illegal" for a nursing assistant to perform simple trimming such as trimming of bangs for normal hygiene purposes, understanding that permission of the resident or legal representative must first be obtained.

Issue b. This may become a resident rights concern if all residents do not consider hair trims and/or cuts routine, but rather a personal choice.

Response: Before any hair trims or cuts are performed by a beautician or for hygiene purposes, the resident or his/her legal guardian must give permission. This <u>is</u> a personal choice.

5. What is meant by routine "nail hygiene services"?

Answer: These would include trimming, cleaning and filing of nails provided by facility staff. This would not include polishing of nails.

Facilities may not charge a resident for equipment necessary to perform nail hygiene services (such as a special nail clipper) unless the resident wants and requests the specialized equipment.

6. Will Medicaid make payment for over the counter drugs and, if so, what is the reimbursement process? Which over the counter drugs will be included?

Answer: Effective with dates of service on or after October 1, 1993, the nursing home will be reimbursed through the Medicaid per diem for over the counter medications of Medicaid recipients. The over the counter categories include, but are not limited to, the following:

> aspirin, acetaminophen, ibuprofen, laxatives, vitamins and minerals, antihistamines, hemorrhoidal products, topical steroids, antibiotics, antifungals and pediculicides, vaginal products, decubitus treatments, digestive aids, quinine, saliva substitutes, antidiarrheals, non-covered cough and cold preparations, non-covered ophthalmic products, and other non-covered over the counter drugs.

Effective October 1, 1993, providers may not bill residents, resident funds, family or other interested persons for these items. Further questions relative to the billing process and/or types of "other non-covered over the counter drugs" should be directed to the Wisconsin Bureau of Health Care Financing or EDS-Federal Provider Relations.

7. How many varieties and name brands of "routine personal hygiene items and services" must a facility be responsible for providing?

Answer: Facilities must provide covered items and services in sufficient quality and quantity to meet the needs of the individual nursing home resident. It is the required assessment of resident needs, not resident preferences, that will dictate the variety of products the facility will need to provide. If a resident is unable to use the facility-supplied brand due to harshness of, or allergy to, the product, the facility must provide an appropriate substitute at no charge to the resident.

However, as stated previously, if a resident prefers and requests a certain brand of an item, a facility may charge the resident the difference between the cost of the brand the resident requests and the cost of the brand generally provided by the facility.

8. What is included in "personal laundry"?

Answer: Basic personal laundry does not include dry cleaning, mending, hand washing, or other specialty services. These services need not be provided and residents may be charged for these services if they request them.

Residents may not be charged for basic personal laundry services. They also are not required to accept the basic personal laundry services facilities must provide. Residents are free to make other arrangements for laundering of their clothing if they desire.

9. What are "notions and novelties and confections"?

Answer: Notions and novelties are small items that are useful to, or having meaning for, a resident.

Confections are candies and other sweet delicacies.

10. What charges may a facility make to a resident in regard to the use of his/her private television?

Answer: A facility may charge the resident to hook up a resident's television to cable TV. The facility may not charge the resident for the electricity to operate the television.

11. What charges may a facility make to a resident in regard to social events and the activities program of the facility?

Answer: 42 CFR 483.15(f) requires the facility to furnish an activities program that must meet the interests and the physical, mental and psychosocial well-being of each resident. The facility must furnish all services necessary to comply with this requirement and may not charge residents for any portion of this activities program, including off-site excursions that are part of the activities program.

Certain social events, however, may fall outside the scope of the required activities program, for example educational events or other events offered by outside entities. If residents request to participate in these type of activities, they may be charged the required fee.

Combined response to further questions:

Question a. If an outside program is scheduled as part of the facility activity program, is that considered within the scope of the activity program?

Question b. If an outside program is not scheduled as part of the facility program and the residents request to attend this program, is this considered outside the scope of the program, with residents being charged to attend?

Response: Facilities may charge for all entertainment and social events outside of the required activities program. Facilities cannot charge for entertainment and social events offered within the scope of the prescribed activities program, regardless of whether the activity is offered on or off the facility's premises.

The overall activity program in a facility should be multi-faceted and reflect each individual resident's needs. Prescribed activities programs are individualized for each resident. These are developed through a comprehensive activity assessment and activity care plan for each individual. Should a resident choose to partake in an activity not identified in his/her prescribed individualized activity plan, and which is not a part of the overall facility multi-faceted activity program, the resident may be charged for participation if:

-it is the resident's request and choice to partake in the program; and

-the resident has been notified in advance of any charges connected with participating in the program.

Certain social events and entertainment may be outside the scope of the overall facility's activities program. For example, a local service organization may arrange a day trip for elderly individuals and a nursing home may publicize this event and assist residents in signing up for it. The resident may be charged for the program if it is the resident's request to attend the outing and he/she is aware of any additional charges.

Some events offered on facility premises, such as educational events or events offered by outside entities, could fall outside the scope of the required activities program. Charging for these events at a resident's choice and request to attend is not prohibited. Prohibition of charges could deny residents access to group rates or other benefits.

There is no prohibition from facilities charging residents in connection with events that are free to the public because facilities may incur expenses for transportation, escorts and other related costs. As long as the resident has requested to attend the event, is aware prior to attending the event of any additional charges, facilities may charge for such costs. (Also please review question number 14 in regard to escort services.)

12. What "specially-prepared or alternative food requested" by the resident may be charged to the resident? Does this include the required food alternatives the facility must prepare as substitutes to the regular menu.

Answer: This regulation does not relieve the facility from meeting the dietary needs of its residents, including special diets, food supplements, and substitutes for residents who refuse to eat the food that is offered.

It does allow residents to purchase specialty foods or beverages and to request of facilities specially-prepared foods.

However, residents may be charged only for specially-prepared food if they are informed that there will be a charge and the charge may be only the difference in price between the requested item and the covered item.

13. May a resident in receipt of Medicaid/Medicare be charged for the private hiring of nurses or nursing assistants?

Answer: A resident may pay for the services of a privately-hired nurse or nursing assistant who has been employed by the resident, family member, friend or legal representative to provide care or companionship to him or her. Individuals employed by the resident are not services that are covered by Medicaid or Medicare. The employment is a private contract between the resident and the nurse or nursing assistant and the amount of the charge is an agreement between the resident and the privately-hired individual.

However, the nurse or nursing assistant may not receive additional reimbursement from Medicaid or Medicare for those hours of employment contracted privately with the resident. Also, if the nurse or nursing assistant is an employee of the facility, the nurse or nursing assistant must perform these duties at a time when he/she is not working as an employee of the facility.

14. May a Medicaid/Medicare resident be charged for the provision of an escort for the resident who needs to travel outside the nursing home to receive medical services?

Answer: For Medicaid residents, staff employed by the nursing home that accompany residents during visits to physicians or other health care providers are considered service within the nursing home's daily Medicaid rate if the accompanying time coincides with the on-duty hours of the staff person.

HSS 107.09(4)(a)2f, Wis. Adm. Code, states that "(t)he amount charged for transportation may not include the cost of the facility's staff time, and shall be for an actual mileage amount." The nursing home's staff costs for transportation services are included in the calculation of the Administrative and General or in the Direct Care component of the daily rate depending on the home's accounting system.

42 CFR 483.10(c)(8) does not address the issue of escort services directly. However, the answer to escort services is similar to the previous question #13. A resident may pay for the services of a privately hired nurse or nursing assistant who has been employed by the resident, family member, friend or legal representative to provide care or companionship to him or her. Individuals employed by the resident are not services that are covered by Medicaid or Medicare. The employment is a private contract between the resident and the nurse or nursing assistant and the amount of the charge is an agreement between the resident and the privately-hired individual.

However, the nurse or nursing assistant may not receive additional reimbursement from Medicaid or Medicare for those hours of employment contracted privately with the resident. Also, if the nurse or nursing assistant is an employee of the facility, the nurse or nursing assistant must perform these duties at a time when he/she is not working as an employee of the facility.

The key point is that the resident, not the facility, is initiating and requesting the need for the escort service to health providers and the resident is contracting privately for the service.

15. Are facilities required to document each incident of informing a resident that there will be a charge for a service?

Answer: No. Facilities are required to provide at the time of admission and periodically during the resident's stay in the facility a list of (1) services available; (2) services covered under Medicare or Medicaid; and (3) charges for services not covered.

Because residents are periodically informed in writing of services for which they may be charged and how much charges will be, the facility is not required to document each incident of informing the resident that there will be a charge for a service. However, it is important to remind residents that there will be a charge for a service every time such a service is requested.

16. Does this regulation pertain to residents who are paying privately for their care?

Answer: The regulation does not directly pertain to private-pay residents due to the emphasis on items and services included or not included in Medicaid or Medicare. However, all aspects of the regulation pertaining to proper resident notification of charges for an item or service do apply.

If you have further questions regarding this subject, please contact your Regional Field Operations Director.

JF/SC/pw 248a.nm

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-Illinois State Agency
-Ohio State Agency
-Michigan State Agency
-Indiana State Agency
-Minnesota State Agency
-WI Coalition for Advocacy
-Serv. Employees Internat'l Union
-WI Counties Assn.
-WI Assn. of Homes & Serv/Aging
-WI Health Info. Mgmt. Assn.
-Mark Bunge, BPH
-Renal Dialysis Network
-WI NH Social Workers Assoc.
-Commission on Geriatric Health
-WI Assn. of Nursing Homes
-WI Assn. of Medical Directors
-Admin., Division of Care and Treatment Facilities
-WI Assn. of Hospital SW and Discharge Planners
-Bd. on Aging & Long Term Care
-Bur. of Design Prof., DRL
-WI Homecare Organization
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-Bureau of DD Services
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